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10 ERIC GARCETTI, LAURA GUGLIELMO

11 **No Fee Required Gov't Code § 6103**

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 AIDS HEALTHCARE FOUNDATION,

15 Petitioner,

16 vs.

17 CITY OF LOS ANGELES; ERIC  
18 GARCETTI, in his capacity as Mayor of  
the City of Los Angeles; LAURA  
19 GUGLIELMO, in her capacity as Executive  
Director of the Los Angeles Housing +  
Community Investment Department; and  
20 DOES 1 through 10, inclusive,

21 Respondents.

22 **CASE NO. 19STCP04532**

23 **Assigned to Hon. James C. Chalfant  
Dept. 85**

24 **DEFENDANTS CITY OF LOS ANGELES,  
ERIC GARCETTI, AND LAURA  
GUGLIELMO ANSWER TO  
PETITIONER'S AMENDED VERIFIED  
PETITION FOR WRIT OF MANDATE,  
AND ADMINISTRATIVE WRIT**

25 Respondents CITY OF LOS ANGELES, ERIC GARCETTI, and LAURA  
26 GUGLIELMO (hereinafter collectively "Respondents") hereby Answer the verified  
27 Amended Petition for Writ of Mandate and Administrative Writ (collectively "Writ") and  
28 allege affirmative defenses for themselves and no other, and with full reservation of the  
right to supplement and/or amend this Answer, as follows:

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30     ///

## INTRODUCTION

1. In answering paragraph 1 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

## **PARTIES**

2. In answering paragraph 2 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

3. Paragraph 3 of the Amended Writ contains no allegations.

4. Admit paragraph 4 of the Writ.

5. Admit paragraph 5 of the Writ

6. In answering paragraph 6 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

## **JURISDICTION AND VENUE**

7. In answering paragraph 7 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

8. Admit paragraph 8 that venue is proper in the county of Los Angeles.

## **GENERAL ALLEGATIONS**

## **The Procurement Process for the RFP Must Comply with City Regulations**

9. In answering paragraph 9 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein, and lack sufficient knowledge or information at this time to admit or deny the contents of Exhibit A attached to the Writ, and on that basis denies all of these allegations and Exhibit A. Admit that on or about

1 May 9, 2019, the City of Los Angeles issued the PROPOSITION HHH (PROP HHH)  
2 HOUSING CHALLENGE REQUEST FOR PROPOSAL (RFP).

3 10. In answering paragraph 10 of the Writ, Respondents lack sufficient  
4 knowledge or information at this time to form a belief as to the truth of the factual  
5 allegations and legal conclusions contained therein and on that basis denies all of these  
6 allegations and conclusions.

7 11. In answering paragraph 11 of the Writ, Respondents lack sufficient  
8 knowledge or information at this time to form a belief as to the truth of the factual  
9 allegations and legal conclusions contained therein and on that basis denies all of these  
10 allegations and conclusions.

11 12. In answering paragraph 12 of the Writ, Respondents lack sufficient  
12 knowledge or information at this time to form a belief as to the truth of the factual  
13 allegations and legal conclusions contained therein, and lack sufficient knowledge or  
14 information at this time to admit or deny the contents of Exhibit B attached to the Writ,  
15 and on that basis denies all of these allegations, conclusions, and Exhibit B.

16 13. In answering paragraph 13 of the Writ, Respondents lack sufficient  
17 knowledge or information at this time to form a belief as to the truth of the factual  
18 allegations and legal conclusions contained therein and on that basis denies all of these  
19 allegations and conclusions.

20 14. In answering paragraph 14 of the Writ, Respondents lack sufficient  
21 knowledge or information at this time to form a belief as to the truth of the factual  
22 allegations and legal conclusions contained therein, and lack sufficient knowledge or  
23 information at this time to admit or deny the contents of Exhibit C attached to the Writ,  
24 and on that basis denies all of these allegations, conclusions, and Exhibit C.

25 15. In answering paragraph 15 of the Writ, Respondents lack sufficient  
26 knowledge or information at this time to form a belief as to the truth of the factual  
27 allegations and legal conclusions contained therein, and lack sufficient knowledge or  
28 information at this time to admit or deny the contents of Exhibit D attached to the Writ,  
and on that basis denies all of these allegations, conclusions, and Exhibit D.

16. In answering paragraph 16 of the Writ, Respondents lack sufficient  
knowledge or information at this time to form a belief as to the truth of the factual

1 allegations and legal conclusions contained therein, and lack sufficient knowledge or  
2 information at this time to admit or deny the contents of Exhibit E attached to the Writ,  
3 and on that basis denies all of these allegations conclusions, and Exhibit E.

4 17. In answering paragraph 17 of the Writ, Respondents Lack sufficient  
5 knowledge or information at this time to form a belief as to the truth of the factual  
6 allegations and legal conclusions contained therein, and lack sufficient knowledge or  
7 information at this time to admit or deny the contents of Exhibit F attached to the Writ,  
8 and on that basis denies all of these allegations, conclusions, and Exhibit F.

9 18. In answering paragraph 18 of the Writ, Respondents lack sufficient  
10 knowledge or information at this time to form a belief as to the truth of the factual  
11 allegations and legal conclusions contained therein, and lack sufficient knowledge or  
12 information at this time to admit or deny the contents of Exhibit G attached to the Writ,  
13 and on that basis denies all of these allegations, conclusions, and Exhibit G.

14 19. In answering paragraph 19 of the Writ, Respondents lack sufficient  
15 knowledge or information at this time to form a belief as to the truth of the factual  
16 allegations and legal conclusions contained therein and on that basis denies all of these  
17 allegations and conclusions.

18 20. In answering paragraph 20 of the Writ, Respondents lack sufficient  
19 knowledge or information at this time to form a belief as to the truth of the factual  
20 allegations and legal conclusions contained therein, and lack sufficient knowledge or  
21 information at this time to admit or deny the contents of Exhibit H attached to the Writ,  
22 and on that basis denies all of these allegations, conclusions, and Exhibit H.

23 21. In answering the paragraph 21 of the Writ, Respondents lack sufficient  
24 knowledge or information at this time to form a belief as to the truth of the factual  
25 allegations and legal conclusions contained therein and on that basis denies all of these  
26 allegations and conclusions.

27 **The Procurement Process for the RFP Fails to Comply with City Regulations**

28 22. In answering paragraph 22 of the Writ, Respondents lack sufficient  
knowledge or information at this time to form a belief as to the truth of the factual  
allegations and legal conclusions contained therein and on that basis denies all of these  
allegations and conclusions.

1       23. In answering paragraph 23 of the Writ, Respondents lack sufficient  
2 knowledge or information at this time to form a belief as to the truth of the factual  
3 allegations and legal conclusions contained therein and on that basis denies all of these  
4 allegations and conclusions.

5       24. In answering paragraph 24 of the Writ, Respondents lack sufficient  
6 knowledge or information at this time to form a belief as to the truth of the factual  
7 allegations and legal conclusions contained therein and on that basis denies all of these  
8 allegations and conclusions.

9       25. In answering paragraph 25 of the Writ, Respondents lack sufficient  
10 knowledge or information at this time to form a belief as to the truth of the factual  
11 allegations and legal conclusions contained therein and on that basis denies all of these  
12 allegations and conclusions.

13       26. In answering paragraph 26 of the Writ, Respondents lack sufficient  
14 knowledge or information at this time to form a belief as to the truth of the factual  
15 allegations and legal conclusions contained therein and on that basis denies all of these  
16 allegations and conclusions.

**AHF Exhausted Its Administrative Remedies Prior To Bringing This Action**

17       27. In answering paragraph 27 of the Writ, Respondents lack sufficient  
18 knowledge or information at this time to form a belief as to the truth of the factual  
19 allegations and legal conclusions contained therein and on that basis denies all of these  
20 allegations and conclusions.

21       28. In answering paragraph 28 of the Writ, Respondents lack sufficient  
22 knowledge or information at this time to form a belief as to the truth of the factual  
23 allegations and legal conclusions contained therein and on that basis denies all of these  
24 allegations and conclusions.

25       29. In answering paragraph 29 of the Writ, Respondents lack sufficient  
26 knowledge or information at this time to form a belief as to the truth of the factual  
27 allegations and legal conclusions contained therein and on that basis denies all of these  
28 allegations and conclusions.

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## **FIRST CAUSE OF ACTION**

(Writ of Mandate against the City of Los Angeles

(Code of Civ. Proc. §§1085 and 1086)

30. Respondents acknowledge that Petitioner has defined the "City of Los Angeles" as referring to Respondents City, Garcetti and Guglielmo which Respondents object to as unintelligible and verbiage that fails to comport with proper pleading practices, and fails to state a claim upon which relief may be granted. Without waiver of these pleading defects in the entirety of the First Cause of Action, Respondents hereby answer as follows: In answering paragraph 30 of the Writ which re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 28, Respondents incorporate by reference each and every denial, defense and/or objection contained in their answer to paragraphs 1 through 28, to the same extent that Petitioner has incorporated the allegations of paragraphs 1 through 28, and Respondents otherwise lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on these basis, denies all of these allegations and conclusions.

31. In answering paragraph 31 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein, which in any event are overbroad and vague, and on that basis denies all of these allegations and conclusions.

32. In answering paragraph 32 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

33. In answering paragraph 33 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations.

34. In answering paragraph 34 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual

1 allegations and legal conclusions contained therein and on that basis denies all of these  
2 allegations.

3 35. In answering paragraph 35 of the Writ, Respondents lack sufficient  
4 knowledge or information at this time to form a belief as to the truth of the factual  
5 allegations and legal conclusions contained therein and on that basis denies all of these  
6 allegations and conclusions.

7 36. In answering paragraph 36 of the Writ, Respondents lack sufficient  
8 knowledge or information at this time to form a belief as to the truth of the factual  
9 allegations and legal conclusions contained therein and on that basis denies all of these  
allegations and conclusions.

10 **SECOND CAUSE OF ACTION**

11 (Writ of Mandate against the City of Los Angeles

12 (Code of Civ. Proc., §1094.5)

13 37. Respondents acknowledge that Petitioner has defined the "City of Los  
14 Angeles" as referring to Respondents City, Garcetti and Guglielmo which Respondents  
15 object to as unintelligible and verbiage that fails to comport with proper pleading  
16 practices, and fails to state a claim upon which relief may be granted against  
17 Respondents Garcetti and Guglielmo. Without waiver of these pleading defects in the  
18 entirety of the Second Cause of Action, Respondents hereby answer as follows: In  
19 answering paragraph 36 of the Writ which re-alleges and incorporates by reference the  
20 allegations contained in paragraphs 1 through 35, Respondents incorporate by  
21 reference each and every denial, defense and/or objection contained in their answer to  
22 paragraphs 1 through 35, to the same extent that Petitioner has incorporated the  
23 allegations of paragraphs 1 through 35, and Respondents otherwise lack sufficient  
24 knowledge or information at this time to form a belief as to the truth of the factual and  
25 legal allegations contained therein and on these basis, denies all of these allegations  
and conclusions.

26 38. In answering paragraph 38 of the Writ, Respondents lack sufficient  
27 knowledge or information at this time to form a belief as to the truth of the factual  
28 allegations and legal conclusions contained therein and on that basis denies all of these  
allegations and conclusions.

39. In answering paragraph 39 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

40. In answering paragraph 40 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

41. In answering paragraph 41 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

42. In answering paragraph 42 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

43. In answering paragraph 43 of the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

## **PRAYER FOR RELIEF**

1. In answering paragraph 1 in the Prayer For Relief in the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

2. In answering paragraph 2 in the Prayer For Relief in the Writ, Respondents lack sufficient knowledge or information at this time to form a belief as to the truth of the factual allegations and legal conclusions contained therein and on that basis denies all of these allegations and conclusions.

1       3. In answering paragraph 3 in the Prayer For Relief in the Writ,  
2 Respondents lack sufficient knowledge or information at this time to form a belief as to  
3 the truth of the factual allegations and legal conclusions contained therein and on that  
4 basis denies all of these allegations and conclusions.

5       4. In answering paragraph 4 in the Prayer For Relief in the Writ,  
6 Respondents lack sufficient knowledge or information at this time to form a belief as to  
7 the truth of the factual allegations and legal conclusions contained therein and on that  
8 basis denies all of these allegations and conclusions.

**AFFIRMATIVE DEFENSES**

9       As separate and distinct affirmative defenses as to the Writ and Prayer for Relief  
10 alleged against Respondents, they allege each of the following:

**FIRST AFFIRMATIVE DEFENSE**

12       Failure to Allege a Cause of Action

13       (As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

14       Government acts are presumed to be regularly performed. Evidence Code § 664.  
15 The Writ, and each and every purported claim and/or cause of action therein, fail to  
16 state facts sufficient to constitute a cause of action or claim upon which relief can be  
17 granted. Based upon information and belief, Respondents aver that Petitioner does not  
18 have standing in this RFP due to disqualification arising from their pending lawsuits  
19 against the City which they failed to disclose and has otherwise not sustained an injury-  
20 in-fact nor invasion of a legally protected interest that is concrete and particularized, and  
21 there are no allegations of a causal connection between an injury and any conduct or  
22 omissions by Respondents, and any claimed injury would not likely be redressed by a  
23 favorable decision.

24       NO CLAIM FOR DECLARATORY RELIEF: The fundamental basis of  
25 declaratory relief is the existence of an actual present controversy over a proper  
26 subject. *Friends of the Trails v. Blasius*, 78 Cal. App. 4<sup>th</sup> 810, 831 (2000). Petitioner's  
27 claims must be set forth together with the *ultimate facts* to sustain them. *Frederick v.*  
28 *Northside Water Company of Walnut*, 49 Cal. App. 2d 489, 491 (1942). Generally,  
declaratory relief may not be used as an attack upon an order of an administrative

1 agency. *Scott v. City of Indian Wells*, 6 Cal. 3d 541, 546 (1972). No timely present or  
2 actual controversy is alleged nor has any vested right be articulated.

3 RIPENESS: Constitutional claims are not ripe for review when there has not  
4 been a final administrative decision regarding the contested matter. *Traweek v. City and*  
5 *County of San Francisco*, 920 F. 2d 589, 593 (9<sup>th</sup> Cir. 1990) (ripeness requirements that  
6 applies to takings claim also applies to claims for denial of substantive due process,  
7 equal protection and procedural due process claims). Exhaustion of administrative  
8 remedies is "a jurisdictional prerequisite to resort to the courts." *Abelleira v. District*  
9 *Court of Appeal*, 17 Cal. 2d 280, 293 (1941).

10 NO FOURTEENTH AMENDMENT CLAIM: The Fourteenth Amendment  
11 Procedural Due Process claim fails to state a claim for relief due to the absence of  
12 allegations showing (1) a protectable liberty or property interest; and (2) a denial of  
13 adequate procedural protections. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167  
14 (9th Cir. 2005). The Supreme Court in *Matthews v. Eldridge*, 424 U.S. 319, 334, 96 S.  
15 Ct 893, 47 L. Ed. 2d 18 (1976), articulated three factors to guide decisions about "what  
16 process is due", including: (1) the private interest that will be affected by the official  
17 action; (2) the risk of an erroneous deprivation of such interest through the procedures  
18 used and the probable value, if any, of alternative or substitute procedural safeguards;  
19 and (3) the government interest, including the function involved and the fiscal and  
20 administrative burdens that the additional or substitute procedural requirement would  
21 entail. Courts have held that the "differences in the origin and function of administrative  
22 agencies preclude wholesale transportation of the rules of procedure, trial, and review  
23 that have evolved from the history and experience of courts. The judicial model of an  
24 evidentiary hearing is neither a required, nor even the most effective method of  
25 decision-making..." *Mohilef v. Janovici*, 51 Cal. App. 4<sup>th</sup> 267, 288-289 (1996). In an  
26 administrative setting, all that is necessary is that the procedures be tailored in light of  
27 the decision to be made according to the capacities and circumstances of those who  
28 are to be heard to insure that they are given a meaningful opportunity to present their  
case. *Id.* In assessing what process is due, substantial weight must be given to the  
good faith judgment of the agency that its procedures assure fair consideration of the  
claims of individuals. *Id.* The opportunity to present an administrative written appeal

1 satisfies due process and preserves confrontation rights. See *Mohilef v. Janovici*, 51  
2 Cal. App. 4<sup>th</sup> 267, 288-289 (1996).

3 Respondents reserve the right to supplement this affirmative defense.

4 **SECOND AFFIRMATIVE DEFENSE**

5 Government Code § 815

6 (As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

7 Except as otherwise provided by statute, a public entity is not liable for common  
law tort action or tort remedies.

8 **THIRD AFFIRMATIVE DEFENSE**

9 Government Code § 818.2

10 (As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

11 A public entity is not liable for any injury caused by adopting or failing to adopt an  
12 enactment or by failing to enforce any law.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 Government Code § 818.8

15 (As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

16 A public entity is not liable for negligent or intentional misrepresentations of its  
17 employees.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 Government Code § 820.2

20 (As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

21 A public employee is not liable for any act or omission which is the result of the  
22 exercise of discretion vested in him or her.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 Government Code § 820.2

25 (As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

26 A public employee is not liable for any act or omission which is the result of the  
27 exercise of discretion vested in him or her.

28 **SEVENTH AFFIRMATIVE DEFENSE**

Government Code § 820.4

(As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

A public employee is not liable for their acts or omissions, exercising due care, in their execution or enforcement of any law.

## **EIGHTH AFFIRMATIVE DEFENSE**

## Government Code § 818.4, § 821.2

(As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

A public employee is not liable for an injury caused by his or her issuance, denial, suspension or revocation of, or by his or her failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order or similar authorization where s/he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

## **NINTH AFFIRMATIVE DEFENSE**

## Negligence and Contributory Negligence of Petitioner

**(As To All Writs, Claims and Causes of Action Alleged Against All Respondents)**

Without admitting that Petitioner has sustained any damage or detriment, or that these Answering Respondents are liable to Petitioner in any manner whatsoever for any of the purported causes of action in the Writ, Respondents are informed and believe and thereon allege that Petitioner's harm and damages alleged were directly and proximately caused and contributed to by the negligence of Petitioner and its agents, and to the extent of damages sustained, if any, should be reduced in proportion to the amount of said negligence, and that Petitioner has failed to exercise reasonable and ordinary care and/or was otherwise at fault in preventing the alleged damages set forth in the Writ.

## **TENTH AFFIRMATIVE DEFENSE**

## Statute of Limitations

(As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

All writs, claims for declaratory and injunctive relief, and each and every purported claim and/or cause of action in the Writ are time barred.

## **ELEVENTH AFFIRMATIVE DEFENSE**

### No Entitlement to Attorney's Fees and Costs

**(As To All Writs, Claims and Causes of Action Alleged Against All Respondents)**

1 Plaintiff has failed to establish any entitlement to attorney's fees under any  
2 applicable rule of law or statute.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 **Valid Exercise of Police Powers**

5 (As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

6 The City decision-making at issue reflected the valid exercise of the City's police  
7 power in a manner that substantially advanced legitimate government interests and the  
8 means chosen to implement these actions substantially advances the stated intended  
purpose.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 **Qualified Immunity**

11 (As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

12 Respondents have qualified immunity against liability for actions taken pursuant  
13 to the course and scope of their employment duties.

14 **FOURTEENTH AFFIRMATIVE DEFENSE**

15 **Government Code § 815.2 and §820.8**

16 (As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

17 A public entity and its employees are not liable for the acts of third parties.

18 **FIFTEENTH AFFIRMATIVE DEFENSE**

19 **No Substantive Due Process Claim – Legitimate Business Purposes**

20 (As to All Writs, Claims and Causes of Action Alleged Against Respondents)

21 The Fourteenth Amendment is not self-executing and does not independently  
22 authorize a civil action for damages. *McClelland v. City of Modesto* 2009 U.S. Dist.  
23 LEXIS 82473 at 29-33 (2009). A municipality has broad discretion under its general  
24 police powers to regulate the use of real property within its jurisdiction to promote the  
25 public welfare. Cal. Const., art. XI, § 7; *Big Creek Lumber Co. v. County of Santa Cruz*,  
26 38 Cal. 4<sup>th</sup> 1139, 1151-1152 (2006). Only the most egregious official conduct can be  
27 said to be arbitrary in a constitutional sense. Such conduct can be shown by conduct  
28 intended to injure in some way unjustifiable by any government interest. *Brittain v. Hansen*, 451 F.3d 982, 991 (9<sup>th</sup> Cir. 2006). In order to satisfy this standard, a petitioner  
must do more than show that the government actor intentionally or recklessly caused

1 injury by abusing or misusing government power. The petitioner must demonstrate a  
2 degree of outrageousness and a magnitude of potential or actual harm that is truly  
3 "conscience shocking." *Clark v. City of Hermosa Beach*, 48 Cal. App.4<sup>th</sup> 1152 (1996). If  
4 is at least "fairly debatable" that the government's conduct is rationally related to a  
5 legitimate governmental interest, there has been no violation of due process. *Halverson*  
6 *v. Skagit County*, 42 F. 3d. 1257, 1262 (9<sup>th</sup> Cir. 1994). Without admitting that Petitioner  
7 has sustained any damages or detriment, or that these answering Respondents are  
8 liable to Petitioner in any manner whatsoever for any of the purported claims and  
9 causes of action alleged in the Writ, Respondents allege that at all times herein, all  
10 employees involved in administering the Proposition HHH Housing Challenge Request  
11 For Proposal had legitimate business reasons for all of the decision-making at issue  
12 which bore a reasonable relationship to the objectives and purposes of the Proposition  
HHH Housing Challenge Request for Proposal.

13 **SIXTEENTH AFFIRMATIVE DEFENSE**

14 Failure to Take Advantage of Preventative or Corrective Opportunities/  
15 Avoidable Consequences Doctrine

16 (As to All Writs, Claims and Causes of Action Alleged Against Respondents)

17 Without admitting that Petitioner has sustained any damages or detriment, or that  
18 these answering Respondents are liable to Petitioner in any manner whatsoever for any  
19 of the purported causes of action in the Writ, these answering Respondents allege that  
20 Petitioner unreasonably failed to take advantage of preventative and corrective  
21 opportunities, including exercising any administrative and appellate rights, thereby  
22 precluding and/or limiting Petitioner's recovery, if any, and further, that these answering  
23 Respondents exercised reasonable care to preclude and correct the behavior  
complained of, if any.

24 **SEVENTEENTH AFFIRMATIVE DEFENSE**

25 Failure to Exhaust

26 (As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

27 A CCP § 1094.5 administrative writ makes administrative mandamus available  
28 for review of any final administrative order or decision made as the result of a  
proceeding in which by law a hearing is required to be given, evidence is required to be

1 taken and discretion in the determination of facts is vested in the inferior tribunal,  
2 corporation, board or officer. Under CCP § 1094.5, the Court evaluates whether  
3 substantial evidence supports the administrative agency's findings. Courts must accord  
4 a strong presumption of correctness to the administrative findings if they are supported  
5 by substantial evidence. *Bixby v. Pierno*, 4 Cal.3d 120, 129 (1971). An administrative  
6 remedy is provided when an administrative body is required to actually accept, evaluate,  
7 and resolve disputes or complaints. *City of Coachella v. Riverside County Airport Land*  
8 *Use. Com.*, 210 Cal. App. 3d 1277, 1287-1288 (1989). A CCP § 1085 writ is a means  
9 for compelling a public entity to perform a legal and ministerial duty [*Kreeft v. City of*  
10 *Oakland*, 68 Cal. App. 4th 46, 53 (1998)] and is available only when the petitioner has  
11 no plain, speedy and adequate remedy; the respondent has a clear, present, and  
12 usually ministerial duty to perform; and the petitioner has a clear, present and beneficial  
13 right to performance. *Conlan v. Bonta*, 102 Cal. App. 4<sup>th</sup> 745, 748 (2002). Judicial  
14 review under CCP § 1085 seeks to determine whether the agency's action was  
15 arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established  
16 public policy, unlawful, procedurally unfair, or whether the agency failed to follow the  
17 procedure and give the notices the law requires. *Lewin v. St. Joseph Hospital of*  
18 *Orange*, 82 Cal. App. 3d 368, 387 (1978). Petitioner has failed to exhaust  
19 administrative remedies and is therefore barred from any relief.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Failure to Mitigate

(As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

The Petition and each of the causes of action and claims set forth therein alleged  
against the City, are barred in whole or in part in that Petitioner has failed to mitigate  
any of the damages or injuries it claims to have suffered from the acts or conduct or the  
City or its representatives.

**NINTEENTH AFFIRMATIVE DEFENSE**

Waiver

(As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

The Petition and each cause of action set forth therein, is barred in whole or part in that Petitioner has waived and/or relinquished the claims or causes of action being asserted in this action.

## **TWENTIETH AFFIRMATIVE DEFENSE**

## Failure to Comply With Government Tort Claims Act

**(As To All Writs, Claims and Causes of Action Alleged Against All Respondents)**

The Petition, and each of the causes of action therein alleged against Respondents, are barred in that Petitioner has failed to timely submit to the City of Los Angeles a statutory claim for money damages and/or other relief as required by Cal. Gov. Code §§ 905, 910, 945.4, 945.6 and 950 to 950.2.

## **TWENTY-FIRST AFFIRMATIVE DEFENSE**

## No Statutory Basis of Liability Is Plead

(As To All Writs, Claims and Causes of Action Alleged Against All Respondents)

Respondents are a municipal entity and/or employees and/or elected officials of a government entity. In California, all government tort liability is dependent on the existence of an authorizing statute. Gov. Code § 815 (a); *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal. 3d 780, 795 (1985). Section 815 of the Government Code abolishes common law tort liability for public entities. See *Eastburn v. Regional Fire Protection Authority*, 31 Cal. 4th 1175, 119 (2003); *Zelig v. County of Los Angeles*, 27 Cal. 4th 1112, 1127–1128 (2002). The California Government Tort Claims Act (§ 810 et seq.) establishes the limits of common law liability for public entities, stating: “A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person, except as otherwise provided by statute.” Gov. Code § 815(a).

## **TWENTY-SECOND AFFIRMATIVE DEFENSE**

## Reservation of Right to Interpose Further Legal Defenses

**(As To All Writs, Claims and Causes of Action Alleged Against All Respondents)**

Respondents presently have insufficient knowledge and information upon which to form a belief as to whether it may have additional, yet unasserted affirmative defenses. Respondents therefore reserve the right to assert additional affirmative defenses in the event discovery indicates this would be appropriate.

1                   **DEMAND FOR JURY TRIAL** is hereby made.

2                   **WHEREFORE**, Respondents pray for judgment as follows:

- 3                   1. That Petitioner take nothing by way of this action;
- 4                   2. That Respondents have judgment entered in its favor and against
- 5                   Petitioner;
- 6                   3. That Petitioner's entire Writ be denied and dismissed with prejudice;
- 7                   4. That Respondents be adjudged as the prevailing parties;
- 8                   5. That Petitioner's request for attorney's fees be denied in its entirety;
- 9                   6. That any request for punitive and exemplary damages be denied in their
- 10                   entirety;
- 11                   7. For such other and further relief as the Court deems just and proper.

12                   Dated: December 17, 2019           MICHAEL N. FEUER, City Attorney  
13   CRAIG TAKENAKA, Managing Assistant City Attorney  
14   DEBORAH BREITHAUP, Deputy City Attorney

15                   By: Deborah Breithaupt  
16   DEBORAH BREITHAUP  
17   Deputy City Attorney

18                   Attorneys for Respondents CITY OF LOS ANGELES,  
19   ERIC GARCETTI, LAURA GUGLIELMO

## PROOF OF SERVICE

I, DEBORAH BREITHAUPT, declare as follows:

At the time of service I was over 18 years of age and not a party to this action. My business address is City Hall - 200 North Spring Street, 21<sup>st</sup> Floor, Los Angeles, CA 90012-4130, which is the County, City and State where this mailing occurred.

On December 17, 2019, I served the document(s) described as ANSWER on all interested parties in this action:

Tom Meyers  
Arti L. Bhimani  
AIDS Healthcare Foundation  
6255 West Sunset Blvd., 21<sup>st</sup> Floor  
Los Angeles, CA 90028  
Telephone: (323) 860-5356

I enclosed true copies of the documents(s) in a sealed envelope or package addressed to the person(s) address(es) as above and:

**By United States Mail:**

[X] placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 17, 2019

DEBORAH BREITHAUP  
Name of Declarant

Debrah Blethrecht  
Signature of Declarant



## Subsequent Receipt

Filed to Court Successfully

Your Order Number: **EF-b48a42f3c90d**

Court Transaction ID: **19LA01609330**

### Order

County/Location: Central District Stanley Mosk Courthouse Department 85  
Matter #: 19STCP04532  
Submitted Date: 12/17/2019 03:02pm

### Case

Filing Title: AIDS HEALTHCARE FOUNDATION vs ERIC GARCETTI, IN HIS CAPACITY AS  
MAYOR OF THE CITY OF LOS ANGELES, et al.  
Case Type: Civil Unlimited  
Case Category: Other Writ /Judicial Review  
Case Number: 19STCP04532  
Case Name: AIDS HEALTHCARE FOUNDATION vs ERIC GARCETTI, IN HIS CAPACITY AS  
MAYOR OF THE CITY OF LOS ANGELES, et al.

### Documents

Answer answer-amended-writ-petition.pdf - 1032950kb

### Additional Documents

Estimated Fees	Amount
Answer	\$ 0.00
Answer	\$ 0.00
Answer	\$ 0.00
<b>Total</b>	<b>\$ 0.00</b>

Filing fees pending validation of government entity exemption

### Message to Clerk

No Fee - Gov. Code sec. 6103

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
Branch Name: Stanley Mosk Courthouse  
Mailing Address: 111 North Hill Street  
City, State and Zip Code: Los Angeles CA 90012

SHORT TITLE: AIDS HEALTHCARE FOUNDATION vs ERIC GARCETTI, IN HIS CAPACITY AS MAYOR OF THE CITY OF LOS ANGELES, et al.

CASE NUMBER:  
19STCP04532

**NOTICE OF CONFIRMATION OF ELECTRONIC FILING**

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of LOS ANGELES. In order to process the filing, the fee shown was assessed.

**Electronic Filing Summary Data**

Electronically Submitted By: Journal Technologies Inc.

Reference Number: EF-b48a42f3c90d

Submission Number: 19LA01609330

Court Received Date: 12/17/2019

Court Received Time: 3:02 pm

Case Number: 19STCP04532

Case Title: AIDS HEALTHCARE FOUNDATION vs ERIC GARCETTI, IN HIS CAPACITY AS MAYOR OF THE CITY OF LOS ANGELES, et al.

Location: Stanley Mosk Courthouse

Case Type: Civil Unlimited

Case Category: Other Writ /Judicial Review

Jurisdictional Amount: Over \$25,000

Notice Generated Date: 12/18/2019

Notice Generated Time: 9:18 am

**Documents Electronically Filed/Received**

**Status**

Answer

Accepted

**Comments**

Submitter's Comments: No Fee - Gov. Code sec. 6103

Clerk's Comments:

**Electronic Filing Service Provider Information**

Service Provider: Journal Technologies Inc.

Contact: Journal Technologies Inc.

Phone: (877) 545-1842 Ext. 1

Superior Court of California  
County of Los Angeles

**Receipt** EFM-2019-1515464.1

**Date:** 12/18/19 9:18 AM  
**Time:** 12/18/19 9:18 AM

CASE # 19STTCP04532  
AIDS HEALTHCARE FOUNDATION vs ERIC

Unlimited Civil- Ans.non-Plaintiff incl. UD-	435.00
GC70612,70602.5,70602.6	
Unlimited Civil- Ans.non-Plaintiff incl. UD-	435.00
GC70612,70602.5,70602.6	
Unlimited Civil- Ans.non-Plaintiff incl. UD-	435.00
GC70612,70602.5,70602.6	
<b>Case Total:</b>	<hr/> 1,305.00

Exempt GC 6103	1,305.00
<b>Total Paid:</b>	<hr/> 1,305.00

19LA01609330